

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IES UTILITIES INC.	DOCKET NO. E-21258
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ORDER DENYING REHEARING

(Issued May 28, 1999)

On April 8, 1999, the Utilities Board (Board) issued an "Order Affirming Proposed Decision and Requiring Exhibit" in this docket. On April 28, 1999, Bradley J. and Paula J. Rutherford, and Bradley and Judith Price (hereinafter referred to jointly as the Rutherfords), landowners, filed an application for rehearing. IES Utilities Inc. (IES) filed an amended Exhibit E on April 28, 1999. On May 3, 1999, the Rutherfords filed an objection to amended Exhibit E. IES filed a second amended Exhibit E on May 5, 1999. Also on May 5, 1999, the Rutherfords filed an objection to the second amended Exhibit E. IES filed a motion to strike and a resistance to the application for rehearing on May 10, 1999.

In the April 8, 1999, order the Board affirmed the administrative law judge's July 17, 1998, "Proposed Decision and Order," and required IES to file a revised Exhibit E for approval consistent with the order. On rehearing, and on May 3, 1999, and May 5, 1999, the Rutherfords objected to the Board's requirement that IES file a revised Exhibit E. The Rutherfords also requested the Board grant rehearing and reopen the record to receive evidence on a proposed IES transmission line that would cross Highway 30 near the Rutherfords' property.

The Rutherfords assert that allowing IES to file a revised Exhibit E is an attempt by the Board to modify the power of condemnation without affording any affected party the right to hearing. The Rutherfords misinterpret the filing of the exhibit. Petition E defines the request for eminent domain. When eminent domain is granted, the exhibit is attached to the franchise to show the extent of the Board's grant. If the Board or the administrative law judge grants the right of eminent domain and that right is different from the original request, then the utility is required to file a revised Exhibit E subject to Board approval to ensure the filing conforms to the order.

The Rutherfords contend there is additional evidence that needs to be considered by the Board regarding a proposed IES project. The evidence put forth by the Rutherfords is not new. The evidentiary record shows IES witness Kenneth Cackoski testified that IES intended to construct another circuit out of the Timber Creek Substation that would cross Highway 30 and then go south to connect into an existing 34.5kV line. (Tr. 116-17, 137-38). The issue was also raised in the Rutherfords' appeal and discussed in the Board's April 8, 1999, order. "Order Affirming Proposed Decision and Requiring Exhibit" at 8 and 10.

The Board has reviewed the petition and will deny it. The record shows the issues raised by the Rutherfords on rehearing are the same issues raised on appeal. The Rutherfords have not advanced any new arguments or evidence in the petition for rehearing that has not already been considered by the Board. The Rutherfords' arguments utilizing the same evidence are not sufficiently persuasive to warrant a change in the result reached by the Board in its April 8, 1999, order. Therefore, the Rutherfords' request for rehearing and IES' motion to strike is denied.

IES will be required to file a revised Exhibit E. The April 28, 1999, amended Exhibit E was the same Exhibit E originally filed in the proceeding. The May 5, 1999, Exhibit E is consistent with the order. However, Bradley and Judith Price are not listed as having an ownership interest in the property.

IT IS THEREFORE ORDERED:

1. The "Application for Rehearing" filed by Bradley J. and Paula J. Rutherford and Bradley and Judith Price on April 28, 1999, is denied for the reasons set forth in the body of this order.
2. The "Motion to Strike" filed by IES Utilities Inc. on May 5, 1999, is denied for the reasons set forth in the body of this order.
3. IES Utilities Inc. shall file a revised Exhibit E for approval in accordance with this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

Dated at Des Moines, Iowa, this 28th day of May, 1999.